STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RJM, a Minor.

CHRISTIE LYNN HAMMERBERG and JESSE HAMMERBERG,

Petitioners-Appellees,

v

CALVIN JOSPH DEVOLL, VI,

Respondent -Appellant.

UNPUBLISHED
June 5, 2001

No. 231168
Menominee Circuit Court
Family Division
LC No. 00-000038

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Respondent father appeals from an order of the family court terminating his parental rights to the minor child in connection with this step-parent adoption. We affirm.

MCL 710.51(6); MSA 27.3178(555.51)(6) sets forth the standard for terminating parental rights in a step-parent adoption case:

> If the parents of a child are divorced, or if the parents are unmarried but the father has acknowledged paternity or is a putative father who meets the conditions in section 39(2) of this chapter, and if the parent having legal custody of the child subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent if both of the following occur:
>
> (a) The other parent, having the ability to support, or assist in supporting, the child, has failed or neglected to provide regular and substantial support for the child or if a support order has been entered, has failed to substantially comply with the order, for a period of 2 years or more before the filing of the petition.

(b) The other parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition.

Respondent argues that the trial court erred in finding that both of these factors existed. We disagree.

Turning first to the issue of support, the evidence clearly establishes that respondent failed to substantially support the child, both before and after the entry of the support order. Further, respondent clearly had the ability to do so. Although it is not clear what respondent's employment situation was at the time of the child's birth, respondent joined the Navy when Rian was 3 months old. Respondent testified that he earned $1100 per month at the time of his enlistment and was earning $1300 a month at the time of his discharge. Clearly he had the ability to pay support. Yet, until 3 months before the filing of the petition in March 2000, respondent failed to pay any support. Respondent blames the Navy for failing to process a wage withholding. However, there was certainly no reason why respondent could not have paid the money directly. This is not a case of the Navy withholding the money but not forwarding it to the Friend of the Court. Rather, each month when the Navy failed to make the withholding, respondent could have mailed a check. He did not.

While it does appear that the Navy began withholding support in December 1999, that is inadequate to establish "regular and substantial" support or substantial compliance with the support order. It is, simply put, too little, too late. Further, respondent's casting of blame on the Navy for failing to withhold the support from his pay does not address the fact that he failed to turn over the necessary information to provide medical coverage for Rian.

As for the failure to "visit, contact or communicate" with Rian, respondent's arguments are similarly unpersuasive. He has visited with the child for a total of 13 hours, or perhaps a little more, in the first 4-1/2 years of the child's life, and not at all in the 20 months preceding the termination hearing. Respondent refers to his service in the Navy as explaining his lack of visitation. While that certainly explains the lack of regular visitation, it does not explain his overall failure to have contact with his child.

He spent very little of his available leave visiting Rian. Further, he took no leave in the last year and a half of his service—he could have taken leave and made some visits. The fact that it allowed him to go on terminal leave earlier does not change the fact that he was thus unavailable to visit his son for a year and a half. Moreover, his earlier departure from the Navy does not appear to have resulted in further visitation as respondent made no effort to see Rian following his discharge.

Furthermore, his Naval service did not prevent him from engaging in other contact, such as letters, cards and telephone calls. He simply did not do it. Indeed, he admitted to writing letters, which he did not mail. He spoke of purchasing gifts, which he did not send.

In sum, although his Naval service did limit his ability to have contact with his son, it did not prevent contact. And respondent has failed to have any substantial contact with his son.

For the above reasons, we conclude that the trial court correctly determined that the statutory grounds for terminating respondent's parental rights were met.

Affirmed.

/s/ David H. Sawyer
/s/ Michael R. Smolenski
/s/ William C. Whitbeck